

**Midwest Canvas Corporation and Production Workers Union of Chicago and Vicinity, Local 707, affiliated with National Production Workers Union. Case 13-CA-31860**

February 7, 1994

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

Upon a charge filed by Production Workers Union of Chicago and Vicinity, Local 707, affiliated with National Production Workers Union, the Union, the General Counsel of the National Labor Relations Board issued a complaint on August 13, 1993, against Midwest Canvas Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 15, 1993, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On December 21, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.<sup>1</sup> The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 29, 1993, notified the Respondent that unless an answer were received by December 6, 1993, a Motion for Summary Judgment would be filed.<sup>2</sup>

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> The Notice to Show Cause was the subject of an "Order Correcting" issued on December 22, 1993. The correction involved the Notice to Show Cause due date and corrected a clerical error in that date changing it from "January 24, 1994" to "January 4, 1994."

<sup>2</sup> According to the uncontroverted statements in the Motion for Summary Judgment, although the return receipt for this letter was returned undated and unsigned, on December 2, 1993, counsel for the Respondent stated in a telephone conversation with counsel for the Acting General Counsel that he had received the letter dated November 29, 1993, and that he did not intend to file an answer to the complaint.

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, with an office and place of business in Chicago, Illinois, has been engaged in the manufacture of tarpaulins and solar covers. During the 1992 calendar year, the Respondent sold and shipped from its Chicago, Illinois facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

All production and maintenance employees working at the Respondent's facility located at 4635 West Lake Street, Chicago, Illinois, and its satellites, excluding all office and clerical employees, professional, technical and administrative employees, supervisors, watchmen and guards as defined in the Act.

Since about July 1, 1990, the Union has been the designated exclusive collective-bargaining representative of the unit employees and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from July 1, 1990, to June 30, 1993. At all times since July 1, 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

About June 4, 1993, or by June 24, 1993, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit employees to be incorporated in a collective-bargaining agreement. Since about June 24, 1993, the Union has requested that the Respondent execute a written contract containing the agreement. Since about June 24, 1993, the Respondent has failed and refused to execute the agreement.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has violated Section 8(a)(1) and (5) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to execute the agreement reached by the parties since about June 24, 1993, we shall order the Respondent, on request, to execute the agreement and apply the terms of the agreement retroactively, making unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Midwest Canvas Corporation, Chicago, Illinois, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Production Workers Union of Chicago and Vicinity, Local 707, affiliated with National Production Workers Union, regarding the wages, hours, and terms and conditions of employment of the employees in the following appropriate unit by failing to execute the agreement it reached with the Union since about June 24, 1993. The unit is as follows:

All production and maintenance employees working at the Respondent's facility located at 4635 West Lake Street, Chicago, Illinois, and its satellites, excluding all office and clerical employees, professional, technical and administrative employees, supervisors, watchmen and guards as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, execute the contract which it reached with the Union and apply the terms of that contract retroactively, making employees whole for any loss of wages and other benefits with interest as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 7, 1994

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith by failing to execute a collective-bargaining agreement which we reached with Production Workers Union of Chicago and Vicinity, Local 707, affiliated with National Production Workers Union, the exclusive representative of the following appropriate unit of employees:

All production and maintenance employees working at our facility located at 4635 West Lake Street, Chicago, Illinois, and its satellites, excluding all office and clerical employees, professional, technical and administrative employees, super-

visors, watchmen and guards as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, execute the contract which we reached with the Union and apply it retroactively to all unit employees.

WE WILL make all unit employees whole, with interest, for loss of wages and other benefits due to our failure to execute the agreement we reached with the Union.

MIDWEST CANVAS CORPORATION